

ASSEMBLY BILL

No. 2023

Introduced by Assembly Member Wagner

February 20, 2014

An act to amend Section 1263.510 of the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

AB 2023, as introduced, Wagner. Eminent domain: compensation: loss of goodwill.

Existing law provides that an owner of property taken by eminent domain is entitled to compensation for loss of goodwill if the owner proves certain specified elements.

This bill would require than an owner additionally prove that goodwill existed before the taking. If the court determines that it is more likely than not that goodwill did exist, evidence of the other elements would be presented to the trier of fact.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1263.510 of the Code of Civil Procedure
2 is amended to read:
3 1263.510. (a) (1) The owner of a business conducted on the
4 property taken, or on the remainder if the property is part of a
5 larger parcel, shall be compensated for loss of goodwill if the
6 owner proves all of the following:

1 (A) Goodwill existed in the business before the owner's property
2 was taken.

3 ~~(1)~~

4 (B) The loss is caused by the taking of the property or the injury
5 to the remainder.

6 ~~(2)~~

7 (C) The loss cannot reasonably be prevented by a relocation of
8 the business or by taking steps and adopting procedures that a
9 reasonably prudent person would take and adopt in preserving the
10 goodwill.

11 ~~(3)~~

12 (D) Compensation for the loss will not be included in payments
13 under Section 7262 of the Government Code.

14 ~~(4)~~

15 (E) Compensation for the loss will not be duplicated in the
16 compensation otherwise awarded to the owner.

17 (2) The court shall first determine whether the owner has
18 presented evidence sufficient to establish the matter described in
19 subparagraph (A). If the court determines that it is more likely
20 than not that goodwill existed before the taking, evidence of the
21 matters described in subparagraphs (B) through (F), inclusive,
22 shall be presented to the trier of fact.

23 (b) Within the meaning of this article, "goodwill" consists of
24 the benefits that accrue to a business as a result of its location,
25 reputation for dependability, skill or quality, and any other
26 circumstances resulting in probable retention of old or acquisition
27 of new patronage.

28 (c) If the public entity and the owner enter into a leaseback
29 agreement pursuant to Section 1263.615, the following shall apply:

30 (1) No additional goodwill shall accrue during the lease.

31 (2) The entering of a leaseback agreement shall not be a factor
32 in determining goodwill. Any liability for goodwill shall be
33 established and paid at the time of acquisition of the property by
34 eminent domain or subsequent to notice that the property may be
35 taken by eminent domain.

36 SEC. 2. It is the intent of the Legislature, in amending
37 subdivision (a) of Section 1263.510 of the Code of Civil Procedure,
38 to overrule *People ex rel. Dept. of Transp. v. Dry Canyon*
39 *Enterprises, LLC*. (2012) 211 Cal.App.4th 486 to the extent that

- 1 decision requires that an owner establish preexisting goodwill by
- 2 more than a preponderance of the evidence.

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